

Expedited Bill No. 1-13  
Concerning: Erosion and Sediment  
Control – Special Protection Areas --  
Amendments  
Revised: 3-19-13 Draft No. 6  
Introduced: January 15, 2013  
Enacted: March 19, 2013  
Executive: March 29, 2013  
Effective: March 29, 2013  
Sunset Date: None  
Ch. 9, Laws of Mont. Co. 2013

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN EXPEDITED ACT to:**

- (1) bring County erosion and sediment control requirements into compliance with the Maryland Stormwater Management Act of 2007 and the 2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control;
- (2) require persons that engage in land disturbing activity in an area designated as a special protection area to pay a monitoring fee to the Department of Environmental Protection in lieu of developing and implementing their own best management practices monitoring plan; and
- (3) generally amend County law regarding erosion, sediment control, and special protection areas.

By amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Storm Water Management  
Article I, Erosion and Sediment Control  
Sections 19-2, 19-3, 19-4, 19-5, 19-6, 19-7, 19-8, 19-9, 19-10, 19-11, 19-12, 19-13, 19-14, 19-15, 19-16, and 19-17  
Article V, Water Quality Review in Special Protection Areas  
Sections 19-60, 19-61, 19-62, 19-64, 19-65, 19-66, and 19-67

By renumbering and amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Storm Water Management  
Article I, Erosion and Sediment Control  
Sections 19-1 to 19-1A

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By renumbering and amending

Montgomery County Code  
Chapter 19, Erosion, Sediment Control and Storm Water Management  
Article I, Erosion and Sediment Control  
Sections 19-1 to 19-1A

By adding

Montgomery County Code  
 Chapter 19, Erosion, Sediment Control and Storm Water Management  
 Article I, Erosion and Sediment Control  
 Sections 19-1, 19-4A, 19-5A, 19-5B, 19-8A, and 19-12A

By repealing

Montgomery County Code  
 Chapter 19, Erosion, Sediment Control and Storm Water Management  
 Article I, Erosion and Sediment Control  
 Section 19-3A

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

*Clerk's Note:*

*Page 4, line 41 – the words “[etc.] and other characteristics” were not bracketed and underlined.*

*Page 5, line 65 – the words “means the” were not underlined*

*Page 9, line 179 – the word “in” was missing*

*Page 22, line 528 – the word “an” should be “a”*

*Page 29, line 715 – the word “or” was not bracketed*

*Page 35, line 869 – word “all” was not bracketed*

*Page 46, line 1169 – the word “Section” should be “Sections”*

1           **Sec. 1. Chapter 19, Article I and Article V, are amended as follows:**

2                           **ARTICLE I. EROSION AND SEDIMENT CONTROL.**

3   **19-1.           [Definitions] Purpose and scope.**

4           The purpose of this Chapter is to protect, maintain, and enhance the public  
5 health, safety, and general welfare by establishing minimum requirements and  
6 procedures to control the adverse impacts associated with land disturbances. The  
7 goal is to minimize soil erosion and prevent off-site sedimentation by using soil  
8 erosion and sediment control practices designed in accordance with the applicable  
9 state law and regulations . Implementing this Chapter will help reduce the negative  
10 impacts of land development on water resources, maintain the chemical, physical,  
11 and biological integrity of streams, and minimize damage to public and private  
12 property.

13           This Chapter contains minimum erosion and sediment control requirements  
14 and does not limit or repeal any other powers granted to the County by State law.

15   **19-1A.           Definitions.**

16           In this Article, these words and phrases have the following meanings:

17           [(1)   **Approved plan:** A set of representational drawings or other documents  
18           submitted by an applicant as a prerequisite to obtaining a sediment control  
19           permit and containing the information and specifications as required by the  
20           department and the district under regulations adopted in accordance with  
21           procedures set forth in this Chapter in order to minimize off-site sedimentation  
22           from land-disturbing activities, and approved by the district as being adequate  
23           to meet the requirements of the state sediment control law and approved by the  
24           department as being adequate to meet the provisions of this Chapter.]

25           **Administration** means the Maryland Department of the Environment Water  
26 Management Administration.

27 **Adverse impact** means any deleterious effect on any or wetland, including its  
28 quality, quantity, surface area, species composition, aesthetics, or usefulness  
29 for human or natural uses, which is, or may become, potentially harmful to  
30 human health, welfare, safety or property, biological productivity, diversity, or  
31 stability.

32 **Agricultural land management practice** means a method or procedure used  
33 in the cultivation of land to further crop and livestock production and  
34 conservation of related soil and water resources. *Agricultural land*  
35 *management practice* does not include logging and timber removal operation  
36 [[or wholesale or retail nursery operation]].

37 **Applicant** means any person, firm, or government agency that executes the  
38 necessary forms to apply for a permit or approval to construct a project.

39 [(2)] **As-built plan[: A]** means a record drawing or plan prepared and  
40 certified by a licensed professional engineer or land surveyor that represents  
41 the actual dimensions, contours, elevations, [etc.,] and other characteristics of a  
42 completed structure or facility.

43 **Best management practice** means a structural device or nonstructural  
44 practice designed to temporarily store or treat stormwater runoff to mitigate  
45 flooding, reduce pollution, and provide other amenities.

46 [(3)] **Clearing[: The]** means the act of removing vegetative cover in a  
47 manner that does not disturb root mat or existing soil surface.

48 **Concept plan** means the first of 3 plans submitted under the comprehensive  
49 review and approval process required by state law and includes the  
50 information necessary to allow an initial evaluation of a proposed project.

51 [(4)] **Department[: The]** means the Department of Permitting Services.

52 [(5)] **Developer:** A person, partnership, or corporation for whose benefit any  
53 of the activities covered by this chapter are commenced or carried on. An

54 individual who builds a house for the individual's own occupancy is not a  
55 developer.]

56 [(6) **Director**[: The] means the Director of the Department of Permitting  
57 Services or [a duly authorized agent] the Director's designee.

58 [(7) **District**[: The] means the Montgomery Soil Conservation District.

59 **Drainage area** means the area contributing runoff to a single point measured  
60 in a horizontal plane that is enclosed by a ridge line.

61 **Environmental site design** means the use of small-scale stormwater  
62 management practices, nonstructural techniques, and better site planning to  
63 mimic natural hydrologic runoff characteristics and minimize the impact of  
64 land development on water resources.

65 [(8) **Erosion**[: The] means the process by which the ground surface is worn  
66 by the action of the wind, water, ice, gravity, or artificial means.

67 **Erosion and sediment control** means a system of structural and vegetative  
68 measures that minimize soil erosion and off-site sedimentation.

69 **Erosion and sediment control plan** means an erosion and sediment control  
70 strategy or plan designed to minimize erosion and off-site sedimentation.

71 [(9) **Excavating**[: Any] means any act by which soil, earth, sand, gravel,  
72 rock, or any similar material is cut into, dug, quarried, uncovered, removed,  
73 displaced, relocated, or bulldozed, and includes the conditions that result from  
74 that act.

75 [(10) **Federal project**: Any project on federally owned land that involves  
76 grading, or any project that involves grading and is administered by a federal  
77 agency.]

78 [(11) **Fence, approved**: A permanent, semi-permanent or portable fence not  
79 less than forty-two (42) inches in height so constructed and so located as is  
80 approved in the permit application to surround sediment basins, steep

81 excavations or ponding areas where required for the safety of members of the  
82 public.]

83 [(12)] **Filling**[: Any] means any act by which soil, earth, sand, gravel, rock, or  
84 any similar material is deposited, placed, pushed, pulled, or transported, and  
85 includes the conditions that result from that act.

86 **Final erosion and sediment control plan** means, along with the final  
87 stormwater management plan, the last of 3 plans submitted under the  
88 comprehensive review and approval process required by state law. A final  
89 erosion and sediment control plan must be prepared and approved as required  
90 by the Department and this Chapter and designed under state Standards and  
91 Specifications.

92 [(13)] **Finished grade**[: The] means the final grade or elevation of the ground  
93 surface conforming to the approved grading plan.

94 [(14)] **Grading**[: An] means an act by which soil is cleared, stripped,  
95 stockpiled, or any combination thereof.

96 **Grading unit** means the maximum contiguous area allowed to be graded at a  
97 given time. For this Chapter, a grading unit is 20 acres or less.

98 **Highly erodible soil** means soil with a slope greater than 15% or soil with a  
99 soil erodibility factor greater than 0.35 and with slopes greater than 5%.

100 **Inspection agency** means the Administration or, if delegated enforcement  
101 authority, the Department.

102 [(15)] **Land-disturbing activity**[: Any] means any earth movement and land  
103 changes which may result in soil erosion from water or wind or the movement  
104 of sediments into state waters or onto lands in the state, including tilling,  
105 clearing, grading, excavating, stripping, stockpiling, filling and related  
106 activities, and the covering of land surfaces with an impermeable material.

107 [(16)] **Low-maintenance ground cover[:** Vegetative] means vegetative  
108 ground cover that provides a thick, stabilizing root mat on slopes with a  
109 gradient between 3:1 and 2:1, and continues to provide that stabilization  
110 without requiring mowing or fertilization more than once each year.

111 **Maximum extent practicable** means designing a stormwater management  
112 system so that all reasonable opportunities for using environmental site design  
113 planning techniques and treatment practices are exhausted and only where  
114 absolutely necessary is a structural best management practice implemented.

115 [(17)] **Natural ground surface[:** The] means the ground surface in its original  
116 state before grading, stripping, excavating or filling, or other land-disturbing  
117 activities.

118 **Owner/Developer** means a person undertaking, or for whose benefit is  
119 undertaken, any activity covered by this Chapter. *Owner/Developer* does not  
120 include a general contractor or subcontractor who does not have a proprietary  
121 interest in a project.

122 [(18)] **Permit[:** The] means the [Montgomery County] sediment control  
123 permit issued by the Department authorizing land-disturbing [activities]  
124 activity [in accordance with the requirements of] under this Chapter.

125 [(19)] **Permittee[:** Any] means any person to whom a permit is issued  
126 [pursuant to] under this Chapter.

127 [(20) **Person:** Any individual, corporation, partnership, joint venture, agency,  
128 unincorporated association, municipal corporation, County or state agency  
129 within the state, or any combination thereof.]

130 **Person** means the federal government, the State, any county, municipality, or  
131 other political subdivision of the State, or any of their units, or an individual,  
132 receiver, trustee, guardian, executor, administrator, fiduciary, or representative

133 of any kind, or any partnership, firm, association, public or private corporation,  
134 or any of their affiliates, or any other entity.

135 [(21)] **Professional engineer** means an engineer duly registered by the State  
136 [of Maryland] to practice professional engineering under [the requirements of  
137 Title 14 of the Business Occupations and Professions Article of the Maryland  
138 Code] state law.

139 [(22)] **Professional land surveyor** means a person who is duly registered and  
140 licensed as such under [the requirements of Title 14 of the Business  
141 Occupations and Professions Article of the Maryland Code] state law.

142 [(23)] **Responsible personnel**[: Any] means any foreman, superintendent, or  
143 project engineer who is in charge of on-site clearing and grading operations or  
144 the implementation and maintenance of an erosion and sediment control  
145 [associated with earth changes or disturbances] plan.

146 [(24)] **Sediment**[: Soils] means soil, sand, stone, or other surface [materials]  
147 material transported or deposited by the action of wind, water, ice, or gravity[,  
148 or artificial means].

149 [(25)] **Site**[: Any lot or parcel of land or a series of lots or parcels of land  
150 adjoining or contiguous or joined together under one (1) ownership where  
151 grading, excavating or filling is, was, or will be performed.] means any tract,  
152 lot, or parcel of land, or combination of tracts, lots, or parcels of land that are  
153 contiguous and in one ownership , or contiguous and in diverse ownership,  
154 where development is to be performed as part of a unit, subdivision, or project.  
155 **Site development plan** means the second of 3 plans submitted under the  
156 comprehensive review and approval process required by state law. A site  
157 development plan must include the information necessary to allow a detailed  
158 evaluation of a proposed project.

159 **Stabilization** means the protection of exposed soils from erosion by the  
160 application of seed and mulch, seed and matting, sod, other vegetative  
161 measure, or structural means.

162 [(26)] **Slope**[: The] means the inclined surface of a fill, excavation, or natural  
163 terrain.

164 [(27)] **Soil**[: Any] means any earth, sand, gravel, rock, or any other similar  
165 material.

166 [(28)] **Standards and specifications**[: The] means the “[1983] 2011  
167 Maryland Standards and Specifications for Soil Erosion and Sediment  
168 Control” or any [subsequent revisions] later revision.

169 [(29)] **State project**: Any project on state-owned land that involves grading.  
170 Use of state funds does not necessarily qualify an activity as a state project.]

171 **Stormwater** means water that originates from a precipitation event.

172 **Stormwater management system** means a natural area, environmental site  
173 design practice, stormwater management measure, or any other structure  
174 through which stormwater flows, infiltrates, or discharges from a site.

175 [(30)] **Stripping**[: Any] means any activity which removes the vegetative  
176 surface cover, including tree felling or removal, clearing, grubbing and  
177 storage, or removal of topsoil.

178 [(31)] **Tree**[: Any] means any woody plant having at least [one (1)] 1 well-  
179 defined stem or trunk measuring at least [three (3)] 3 inches in diameter at  
180 breast height [(DBH)].

181 **Tree canopy** means the area of one or many crowns of the trees on a site,  
182 including trees in forested areas.

183 **Variance** means a modification of minimum erosion and sediment control  
184 requirements for exceptional circumstances when strict adherence to the

185 requirements would result in unnecessary hardship and not achieve the  
 186 purposes of this Chapter.

187 [(32)] **Watercourse** [or **drainageway: Any**] means any natural or artificial  
 188 **watercourse**, including [but not limited to streams, rivers, creeks, ditches,  
 189 channels, canals, conduits, culverts, drains, waterways, gullies, ravines, or  
 190 washes] any stream, river, creek, ditch, channel, canal, conduit, culvert, drain,  
 191 waterway, gully, ravine, or wash in which water flows in a definite direction or  
 192 course, either continuously or intermittently]; and including any area adjacent  
 193 to it]. **Watercourse** includes an adjacent area that is subject to inundation [by  
 194 reason of] from overflow or floodwater.

195 **Watershed** means the total drainage area contributing runoff to a single point.

196 **19-2. Permits required.**

197 (a) [A] Except as provided in this Chapter, a person must not engage in any  
 198 land-disturbing activity without first obtaining a permit [from the  
 199 Department, except as provided in this Chapter].

200 [(b) This Chapter must not be construed to be in conflict with state sediment  
 201 control law.]

202 [(c)] (b) A permit is not required under this Chapter for [the following]:

203 (1) [Any] any minor land-disturbing activity that:

204 [(a)] (A) [Is] is not associated with construction of a new  
 205 residential or commercial building;

206 [(b)] (B) [Involves] involves less than 100 cubic yards of earth  
 207 movement;

208 [(c)] (C) [Disturbs] disturbs less than 5,000 square feet of surface  
 209 area; [and]

210 [(d)] (D) is not associated with a change of use from residential to  
 211 any other use; and

- 212 (E) [Is] is promptly stabilized to prevent erosion and  
 213 sedimentation;
- 214 (2) [Accepted] accepted agricultural land management practices and  
 215 agricultural best management practices used in the cultivation of  
 216 land [in order] to further crop and livestock production, such as  
 217 plowing and construction of an agricultural [structures] structure  
 218 on land that:
- 219 [(a)] (A) [Has] has been farmed by, or with the permission of, the  
 220 same owner during the [proceeding] preceding 5 years; or
- 221 [(b)] (B) [In] in the event of a transfer of ownership or other  
 222 appropriate circumstance, is the subject of a declaration of  
 223 intent to farm under [Title 13 of the Tax-Property Article  
 224 of the Maryland Code] state tax law or a comparable  
 225 declaration filed with the Department by the owner]. This  
 226 exemption does not include wholesale or retail nursery  
 227 operations or logging and timber removal operations];
- 228 (3) [Tree] tree cutting [at or above existing ground] that leaves the  
 229 stump, ground cover, and root mat intact and which disturbs less  
 230 than 5,000 square feet of [surface] tree canopy area;
- 231 (4) [Utility] utility work performed under a Washington Suburban  
 232 Sanitary Commission utility sediment control permit [that is  
 233 issued under the rules and regulations that the Commission  
 234 adopts under the state sediment control law]; or
- 235 (5) [Federal or state projects exempted under the state sediment  
 236 control law.] any clearing or grading activity that is subject  
 237 exclusively to State approval and enforcement under State law  
 238 and regulations.

239 **19-3. Application [of] for permit.**

240 (a) [To obtain a permit an applicant first must file an application in writing  
 241 upon forms furnished by the department. The application must be  
 242 signed by the owner of the property, or an authorized agent of the  
 243 owner, where the land-disturbing activity is to be performed. If the  
 244 owner is a corporation, the application must be signed by the president  
 245 or vice-president and attested by the secretary or assistant secretary. The  
 246 corporate seal must be affixed to the application.] An application for a  
 247 permit must be filed on forms approved by the Department and include:

- 248 (1) all information required by the Department, including identity of  
 249 property owner, developer of the property, and land disturbing  
 250 activity to be performed;  
 251 (2) written permission from the owner for agents of the Department  
 252 to enter the property specified in the application for inspection  
 253 and enforcement under this Chapter;  
 254 (3) all required fees;  
 255 (4) all related soil erosion and sediment control plans; and  
 256 (5) any required financial security.

257 [(b) A sediment control permit must be issued in the name of the current  
 258 property owner.

259 [(c)] (b) A separate permit is required for each [separate noncontiguous] site.

260 [(d)] (c) [Sediment] A sediment control [permits are not] permit is transferable.

261 [(e)] (d) A permit must not be issued for land disturbance associated with  
 262 building or development that is not permitted by [existing] applicable  
 263 zoning, special exceptions, and variances [applicable to the land].

264 (e) A permit must not be issued to a person who must comply with Chapter  
 265 22A until a final forest conservation plan is approved and any required

266 financial security is provided. However, a permit may be issued before  
 267 a final forest conservation plan is approved if the land disturbing  
 268 activity is specified on the approved preliminary plan of subdivision,  
 269 preliminary forest conservation plan, project plan, development plan, or  
 270 approved plan amendment. Any land-disturbing activity must comply  
 271 with all terms and conditions of the permit.

272 (f) The Department must issue a permit to an applicant if the application  
 273 and plans comply with this Chapter, applicable regulations, and the  
 274 Standards and Specifications.

275 [(f)] (g) A sediment control permit must not be issued for any grading or land-  
 276 disturbing activity that is located [within] in or within [twenty-five (25)]  
 277 25 feet of a 100-year floodplain if the activity requires and has not  
 278 received a floodplain district permit under [article] Article III.

279 **[19-3A. Permit limitations.]**

280 [(a)] (1) This Section applies to any proposed land-disturbing activity or  
 281 associated development that is required to be reviewed under  
 282 Chapter 22A, Forest Conservation - Trees, before the land-  
 283 disturbing activity or associated development can occur.

284 (2) Except as provided in subsection (b), the director must not issue a  
 285 sediment control permit to a person who must comply with  
 286 Chapter 22A, Article II, until:

287 (A) a final forest conservation plan, if required, is approved;  
 288 and

289 (B) any financial security instrument required under Chapter  
 290 22A is provided.

291 (b) Land-disturbing activities may occur before approval of a final forest  
 292 conservation plan if the activities are specified on the approved

293 preliminary plan of subdivision, preliminary forest conservation plan,  
294 project plan, development plan, or development plan amendment, and  
295 are in accordance with the terms of the sediment control permit.]

296 **19-4. [Engineered plans] Variances.**

- 297 [(a) (1) An application for a permit must be accompanied by:
- 298 a. An erosion and sediment control plan that, where  
299 applicable, is approved by the State Department of Natural  
300 Resources or Maryland National Capital Park and  
301 Planning Commission;
- 302 b. The permit fee; and
- 303 c. A performance bond.
- 304 (2) Plans must be prepared and certified by:
- 305 a. A professional engineer, land surveyor, or architect; or  
306 b. Other person qualified and approved by the department.
- 307 (3) Erosion and sediment control plans must be designed in  
308 accordance with:
- 309 a. The provisions of this chapter, regulations, and the  
310 standards and specifications; and
- 311 b. Requirements of the Montgomery Soil Conservation  
312 District.
- 313 (b) (1) A copy of the plan must be referred to the district for review of  
314 the proposed erosion and sediment control measures.
- 315 (2) The district must notify the department of its recommendations or  
316 approval so that the application may be processed in a timely  
317 manner.
- 318 (3) A permit must not be issued until the plan is approved by the  
319 department and the district.

- 320 (c) (1) The department may waive the requirement for plans or drawings  
 321 if it finds that the information on the application is sufficient to  
 322 show that proposed work will conform to the requirements of this  
 323 chapter.
- 324 (2) This waiver must not be construed as waiving the requirements of  
 325 the district.
- 326 (3) The permittee is bound by conditions of the application, this  
 327 chapter, and regulations.
- 328 (4) Failure to comply with these requirements may result in the  
 329 department requiring submission and approval of an engineered  
 330 erosion and sediment control plan.
- 331 (d) (1) Utility construction must not take place in Montgomery County  
 332 until an erosion and sediment control plan is submitted to and  
 333 approved by the Washington Suburban Sanitary Commission and  
 334 the department.
- 335 (2) A note must be included on that approved plan that requires the  
 336 utility contractor to repair and maintain in effective condition any  
 337 erosion and sediment control measures affected by the utility  
 338 construction. ]

339 The Department may only grant a variance from the requirements of the  
 340 Standards and Specifications when strict adherence will result in exceptional  
 341 hardship and not achieve the purposes of this Article. The applicant must submit a  
 342 written request for a variance to the Department. The request must specify the  
 343 variance sought and the reasons to allow it. The Department must not grant a  
 344 variance unless the unique circumstances of the site justify the variance.

345 **19-4A. Review and Approval of Erosion and Sediment Control Plans.**

- 346           (a)   The Department must review each erosion and sediment control plan to  
347                   determine compliance with this Chapter and the Standards and  
348                   Specifications before the plan can be approved. In approving a plan, the  
349                   Department may impose conditions necessary to ensure compliance  
350                   with this Chapter and state law and to protect public health and safety.
- 351           (b)   The review and approval process must be part of the comprehensive and  
352                   integrated plan approval process described in state law.
- 353           (c)   A concept plan must at least include the mapping of natural resources  
354                   and sensitive areas, including highly erodible soils and slopes greater  
355                   than 15%. If these areas would not remain undisturbed, either the  
356                   concept or site development plan must describe any enhanced protection  
357                   strategy for these areas during construction.
- 358           (d)   A site development plan application must include all concept plan  
359                   information and indicate how any proposed erosion and sediment  
360                   control practice will be integrated with any proposed stormwater  
361                   management practice. The stormwater management practice must be  
362                   shown through a narrative and an overlay plan showing both  
363                   environmental site design and any erosion and sediment control  
364                   practice. An applicant should submit an initial sequence of construction  
365                   and proposed project phasing to achieve the grading unit restriction. If  
366                   the Director approves, the concept plan and site development plan may  
367                   be combined .
- 368           (e)   An applicant must submit a final erosion and sediment control plan to  
369                   the Department for review and approval. The plan must include all  
370                   information required by the concept plan and site development plan and  
371                   any relevant information not already submitted.

372 (f) A final erosion and sediment control plan is not approved until the  
 373 Department signs and dates the plan.

374 **19-5. Modifications of plans.**

375 (a) [Major modifications] Any major modification of [the] an approved  
 376 [plans] plan must be submitted to the [department, reprocessed]  
 377 Department and processed in the same manner as the original plan, [and  
 378 referred in accordance with section 19-4 of this chapter] where:

379 (1) [Field] field inspection or evaluation of the plan has revealed the  
 380 inadequacy of the plan to accomplish erosion and sediment  
 381 control objectives; or

382 (2) [The] the person responsible for carrying out the approved plan  
 383 finds that, because of changed circumstances or for other reasons,  
 384 the approved plan cannot be effectively carried out.

385 (b) The [department] Department may, in emergency situations and at its  
 386 discretion, require the installation of interim erosion and sediment  
 387 control measures to protect stream channels, other properties, or the  
 388 general public from damage, that will remain in effect until  
 389 modifications or revisions to the plan are approved and implemented.

390 (c) [Field modifications of a minor nature may be authorized by the  
 391 department] The Department may allow a minor field modification;  
 392 provided, that those revisions are] if the modification is consistent with  
 393 [the requirements of] this [chapter] Chapter, regulations, and [the  
 394 standards and specifications] state law. The [department and the  
 395 district] Department must establish a list of allowable field  
 396 modifications, [for this purpose] subject to approval by the  
 397 Administration.

398 (d) If a violation of the limits of disturbance shown on the approved plan  
399 involves removal or damage to trees, the permittee must obtain and  
400 implement an approved reforestation plan from the [Maryland-National  
401 Capital Park and] Planning [Commission] Board.

402 **19-5A. Contents of an Erosion and Sediment Control Plan.**

403 (a) An applicant is responsible for submitting an erosion and sediment  
404 control plan that meets the requirements of the Department, this  
405 Chapter, and state law. The plan must include sufficient information to  
406 evaluate the environmental characteristics of the affected area, the  
407 potential impacts of the proposed grading on water resources, and the  
408 effectiveness and acceptability of any measure proposed to minimize  
409 soil erosion and off-site sedimentation.

410 (b) An applicant must at least submit:

411 (1) a letter of transmittal and/or application;

412 (2) the name, address, and telephone number of:

413 (A) the owner of the property where the grading is proposed;

414 (B) the developer; and

415 (C) the applicant;

416 (3) a vicinity map indicating north arrow, scale, site location, and  
417 other information necessary to easily locate the property;

418 (4) a drainage area map at 1" = 200' minimum scale, showing  
419 existing, interim, and proposed topography, any proposed  
420 improvement, standard symbols for proposed sediment control  
421 features, and pertinent drainage information, including provisions  
422 to protect downstream areas from erosion for at least the closer of  
423 200 feet downstream or the next conveyance system;

- 424                   (5) the location of any natural resource, wetland, floodplain, highly  
425                   erodible soil, slopes 15% and steeper, and any other sensitive  
426                   area;
- 427                   (6) a general description of the predominant soil types on the site, as  
428                   described in appropriate soil survey information available  
429                   through the local soil conservation district or the USDA Natural  
430                   Resources Soil Conservation Service;
- 431                   (7) any proposed stormwater management practice;
- 432                   (8) an erosion and sediment control plan, including:
- 433                    (A) the existing topography and improvements, and any  
434                    proposed topography and improvements, at a scale  
435                    between 1" = 10' and 1" = 50' with 2 foot contours or  
436                    another approved contour interval. For any project with  
437                    more than minor grading, interim contours may also be  
438                    required;
- 439                    (B) scale, project and sheet title, and north arrow on each plan  
440                    sheet;
- 441                    (C) the limit of disturbance (LOD), including:
- 442                       (i) limit of grading (grading units, if applicable);  
443                       (ii) initial, interim, and final phases; and  
444                       (iii) staging and stockpile areas, including those on  
445                       existing impervious areas;
- 446                    (D) the proposed grading and earth disturbance, including:
- 447                       (i) total disturbed area;  
448                       (ii) volume of cut and fill quantities; and  
449                       (iii) volume of borrow and spoil quantities;
- 450                    (E) any storm drainage feature, including:

- 451 (i) any existing or proposed bridge, storm drain,  
 452 culvert, or outfall;
- 453 (ii) velocities and peak flow rates at outfalls for 2-year  
 454 and 10-year frequency storm events; and
- 455 (iii) site conditions around points of all surface water  
 456 discharge from the site;
- 457 (F) any erosion and sediment control practice to minimize on-  
 458 site erosion and prevent off-site sedimentation, including:
- 459 (i) salvage and reuse of topsoil;
- 460 (ii) phased construction and implementation of a  
 461 grading unit to minimize disturbance, both in extent  
 462 and duration;
- 463 (iii) the location and type of any proposed sediment  
 464 control practice;
- 465 (iv) design details and data for any erosion and sediment  
 466 control practice; and
- 467 (v) any specification for any temporary and permanent  
 468 stabilization measure, including:
- 469 1. the “Standard Stabilization Note” on the plan  
 470 stating:
- 471 “Following initial soil disturbance or re-  
 472 disturbance, permanent or temporary  
 473 stabilization must be completed within:
- 474 a. 3 calendar days as to the surface of any  
 475 perimeter dike, swale, ditch, perimeter  
 476 slope, and any slope steeper than 3  
 477 horizontal to 1 vertical (3:1); and



- 505                   (x) installation of any stormwater management  
506                   measure;
- 507                   (xi) approval of the appropriate enforcement authority  
508                   before removing any sediment control; and
- 509                   (xii) removal of any control and stabilization of any area  
510                   that is disturbed by the removal of a sediment  
511                   control;
- 512                   (H) a statement requiring the permittee to contact the  
513                   Department at the following stages of the project or as  
514                   required in the approved erosion and sediment control  
515                   plan, grading permit, or building permit:
- 516                   (i) before beginning any earth disturbance;
- 517                   (ii) after completing the installation of any perimeter  
518                   erosion and sediment control, but before any other  
519                   earth disturbance or grading;
- 520                   (iii) before beginning another phase of construction or  
521                   opening of another grading unit; and
- 522                   (iv) before removing any sediment control practice;
- 523                   (I) certification by the permittee that any clearing, grading,  
524                   construction, or development will be done as required by  
525                   the approved erosion and sediment control plan. The  
526                   certification must also require that the responsible  
527                   personnel involved in the construction project have earned  
528                   a Certificate of Training at [an] a training program  
529                   approved by the state Department of the Environment for  
530                   the control of erosion and sediment before beginning the  
531                   project; and

532 (J) certification by a professional engineer, land surveyor,  
 533 landscape architect, architect, certified professional in  
 534 erosion and sediment control, or forester (for forest harvest  
 535 operations only) registered in the State, that the plan  
 536 complies with erosion and sediment control laws,  
 537 regulations, and standards, if required by the Department  
 538 or the Administration; and

539 (9) any additional information or data that the Department specifies.

540 **19-5B. Standard Erosion and Sediment Control Plan.**

541 (a) The Department may adopt a standard erosion and sediment control  
 542 plan for any activity with minor earth disturbance, such as a single-  
 543 family residence, small commercial or other similar building site, minor  
 544 maintenance grading, and minor utility construction.

545 (b) A standard erosion and sediment control plan must meet the  
 546 requirements of this Chapter and state law.

547 (c) The state Department of the Environment must approve a standard plan  
 548 before the Department adopts it.

549 **19-6. Fees.**

550 The [county executive, by written regulations, adopted under method (3) of  
 551 section 2A-15 of this Code,] County Executive, by Method 3 regulation, may  
 552 establish, increase, or decrease permit and inspection fees and set nonrefundable fee  
 553 schedules for filing, additional submissions, and permit renewals in an amount that  
 554 does not [to] exceed the reasonable cost of administering and enforcing this [chapter]  
 555 Chapter.

556 **19-7. Permit conditions.**

557 [In granting any permit, the director may attach the conditions that the director  
 558 deems reasonably necessary to prevent sedimentation to public or private property or

559 any sewer, storm drain, or watercourse, to prevent the operation from being  
560 conducted in a manner hazardous to life or property, or in a manner likely to create a  
561 nuisance. Those conditions may include the erection or installation of walls, drains,  
562 dams and structures, plantings, erosion and sediment control measures or devices,  
563 furnishing necessary easements and a specified method of performing the work.  
564 These items must be identified on the sediment control plan submitted for approval.  
565 A permit must not be issued until an erosion and sediment control plan is approved  
566 by the department and the district, and the owner certifies that all land-disturbing  
567 activities will be performed pursuant to the erosion and sediment control plan and  
568 modifications incorporated pursuant to section 19-5. The approved plan must be a  
569 condition of the permit. In addition, the permit must not conflict with conditions  
570 shown on the approved subdivision plan, development plan, development plan  
571 amendment, forest conservation plan, or the approved site plan regarding building  
572 restriction lines, limits of disturbance, forest or tree conservation areas, and  
573 conservation easements. A person must not violate any permit condition.]

574 (a) The Director must attach any condition to each permit that is necessary  
575 to:

576 (1) prevent sedimentation to public or private property or a sewer,  
577 storm drain, or water course;

578 (2) prevent a land disturbing activity from being hazardous to life or  
579 property;

580 (3) prevent an adverse environmental impact; and

581 (4) assure compliance with the plan.

582 (b) Each condition must be listed on or attached to the plan. These  
583 conditions may include requirements for a wall, drain, dam, structure,  
584 planting, erosion and sediment control device, or necessary drainage  
585 easement.

- 586           (c) The Director must require each permittee to designate responsible  
 587                   personnel to take charge of on-site clearing, grading or sediment control  
 588                   associated with an approved land disturbing activity. Any individual so  
 589                   designated must have completed a training program approved by the  
 590                   Administration.
- 591           (d) Responsible personnel must:
- 592                   (1) inspect the site each week to assure compliance with the plan;  
 593                               and
- 594                   (2) maintain a log which details the results of any inspection,  
 595                               assessment of conditions and maintenance of any sediment  
 596                               control device.
- 597           (e) The Director may require a permittee to provide an independent design  
 598                   professional to monitor and report to the Department on installation and  
 599                   maintenance of an erosion and sediment control device if a violation of  
 600                   the plan caused serious environmental impact to a watercourse or when  
 601                   a land disturbing activity is taking place in an environmentally sensitive  
 602                   area.
- 603           (f) The Director must require a permittee to implement any reasonable  
 604                   precaution to prevent particulate matter from becoming airborne when  
 605                   any land disturbing activity is planned in a potential asbestiform area.

606   **19-8.        Permit expiration and renewal.**

607           [Permits issued under this chapter expire at the end of the period of time set  
 608           out in the permit. Permits will be renewed provided that the interval between  
 609           documented sediment control inspections does not exceed six (6) months and that  
 610           erosion and sediment control plan approval by the district is not expired or  
 611           withdrawn. Where the director determines that the extension of time will require a  
 612           substantial modification of the grading, erosion and sediment control plan, any

613 extension of a permit is subject to approval of a revised erosion and sediment control  
 614 plan by the department and the district.] Any permit and plan is valid for 2 years after  
 615 it is issued. The Director may extend any permit or plan for 1 year if a permittee so  
 616 requests. The Director may impose an additional standard or requirement as part of  
 617 any extension. The Director may require a plan modification as part of any  
 618 extension.

619 **19-8A. Grandfathering of Approved Plans.**

620 (a) Any plan that is finally approved after January 9, 2013, must comply  
 621 with this Chapter and state law.

622 (b) A plan that is finally approved on or before January 9, 2013, may be  
 623 reapproved with existing conditions if any grading activity begins on the  
 624 site by January 9, 2015, except any stabilization requirement.

625 (c) Any stabilization practice must comply with this Chapter and state law  
 626 by January 9, 2013, regardless of when an approved erosion and  
 627 sediment control plan was approved.

628 **19-9. Permit revocation or suspension; stop work order.**

629 (a) [Any] The Director may suspend or revoke any permit issued under this  
 630 [chapter] Chapter [may be revoked or suspended by the director], after  
 631 notice, for:

632 (1) [Violation] violation of the plan or any [other] condition of the  
 633 permit;

634 (2) [Violation] violation of [any provision of] this [chapter] Chapter  
 635 or any other applicable law[, ordinance, rule,] or regulation  
 636 relating to the work;

637 (3) [Existence of] any condition or [the doing of any] act  
 638 [constituting or] creating a nuisance[, or hazard,] or endangering  
 639 human life or the property of others; or

- 640 (4) [~~Failure~~] failure of the approved erosion and sediment control  
 641 plan to achieve required erosion and sediment control objectives  
 642 due to site characteristics or conditions.
- 643 (b) In addition to the Director's authority under subsection (a), the  
 644 [~~director~~] Director may post a site with a stop work order directing that  
 645 all land-disturbing activity [~~cease~~] stop immediately, [~~provided that~~] if:
- 646 (1) [~~The~~] the land-disturbing activity violates a condition or  
 647 requirement of a [~~Montgomery~~] County or Washington Suburban  
 648 Sanitary Commission sediment control permit, application or  
 649 approved plan or [~~any provisions of~~] this [~~chapter~~] Chapter or  
 650 applicable regulations;
- 651 (2) [~~Written~~] the Department has given written warning notice [~~is~~  
 652 furnished] to the permittee or [~~the~~] its representative [~~of the~~  
 653 permittee] that lists any corrective measures required and the time  
 654 [~~within~~] by which the corrections must be made; and
- 655 (3) [~~The~~] the permittee [~~fails to~~] does not comply with the warning  
 656 notice within the specified time.
- 657 (c) [~~A~~] The Director may issue a stop work order [~~may be issued~~] without a  
 658 warning notice where:
- 659 (1) land disturbance is taking place that requires a permit under this  
 660 Chapter and [~~for which one~~] a permit has not been issued;
- 661 (2) required sediment control measures are not installed, inspected,  
 662 and approved before the land disturbance;
- 663 (3) the limits of disturbance are being violated; or
- 664 (4) inspection reveals the existence of any condition or [~~the doing of~~  
 665 any] act that[:
- 666 a. Is or creates a nuisance or hazard; or



694 conditioned [upon] on the faithful performance of the conditions  
695 in the permit, and any soil erosion and sediment control  
696 [measures] measure specified in the permit, within the time  
697 specified by the [director] Director or [within] any extension  
698 granted by the [director] Director. [For the purposes of this  
699 article] In this Article, a certificate of guarantee is an instrument  
700 issued by an organization or entity that is approved by the  
701 [director] Director and meets the capitalization and other  
702 reasonable criteria [as are] established by [executive] regulation,  
703 including:

704 (A) the demonstrated expertise of the issuing organization or  
705 its members in erosion and sediment control;

706 (B) the estimated square footage of the land included in the  
707 land-disturbing activity to be performed by the permittee;

708 (C) the estimated square footage of the area of all land-  
709 disturbing activities guaranteed by the issuing organization  
710 or entity; and

711 (D) the incidence of violation of, or otherwise failing to  
712 comply with, [the provisions of] this [chapter] Chapter by  
713 all members of the issuing organization or entity.

714 (2) [Certificates] A certificate of guarantee must only be issued by an  
715 approved organization or entity [or] on behalf of members in  
716 good standing of that organization or entity. Any question as to  
717 the eligibility of a permittee to post a certificate of guarantee must  
718 be resolved by the [director] Director in the Director's sole  
719 discretion [of the director].

- 720           (3)    The amount of the bond, irrevocable letter of credit, certificate of  
721                    guarantee, or other instrument required by this section is [three  
722                    hundred dollars (\$300.00)] \$300, plus [two cents (\$0.02)] 2 cents  
723                    per square foot of the area included in the land-disturbing  
724                    activity, plus [amounts as deemed necessary] an amount set by  
725                    the [director] Director to secure the costs of improvements  
726                    required in approved plans, which must not [to] exceed a total  
727                    [amount] of [ten thousand dollars (\$10,000.00)] \$10,000.
- 728           (4)    The instruments required under this Section may be combined  
729                    with the instruments required under Section 19-32 pertaining to a  
730                    storm water management facility, so that one [(1)] instrument  
731                    may be used to satisfy both requirements.
- 732           (5)    The [director] Director may grant a partial or complete waiver of  
733                    the bond, letter of credit, certificate of guarantee, or other  
734                    instrument, upon application, [where] if the [director] Director  
735                    finds minimal impairment of existing surface drainage, minimal  
736                    erosion hazard, and minimal sedimentation hazard [upon] on any  
737                    adjacent land or watercourse, and no hazard to human life or  
738                    property.
- 739           (6)    A corporate bond or letter of credit must be executed and  
740                    maintained by a financial institution, surety, or guaranty company  
741                    qualified to do business in this state and must be conditioned  
742                    [upon] on the faithful performance of the conditions and soil  
743                    erosion and sediment control measures specified in the permit. A  
744                    cash bond must be deposited with the [director of finance]  
745                    Director of Finance, who must give a receipt for it, reciting that

746 the cash has been deposited in compliance with and subject to  
747 [the provisions of] this Section.

748 (7) The bond, letter of credit, certificate of guarantee, or other  
749 instrument obligates the permittee, the permittee's executors,  
750 administrators, successors and assigns, jointly and severally with  
751 the surety or issuing organization or entity, and inures to the  
752 benefit of the County[, its officers, employees,] and to any person  
753 aggrieved by the permittee's failure to comply with the conditions  
754 of the permit. The permittee and the issuing organization or  
755 surety must, under the bond, letter of credit, certificate of  
756 guarantee, or other instrument, continue to be firmly bound under  
757 a continuing obligation [for the payment of] to pay all necessary  
758 costs and expenses or liabilities which may be incurred or  
759 expended by the [department] Department to meet the minimum  
760 requirements of this [chapter] Chapter.

761 (b) [Whenever] If the [department] Department finds that a default has  
762 occurred in the performance of any term or condition of the permit,  
763 bond, letter of credit, certificate of guarantee, or other instrument, the  
764 Department must give written notice [must be given] to the permittee  
765 and to the surety or issuing organization or entity. That notice must  
766 [state] specify the work to be done, the estimated cost, and the period of  
767 time [deemed by] the [department] Department finds to be reasonably  
768 necessary [for completion of] to complete the work.

769 (c) If a cash bond has been posted, notice of default as provided by the  
770 preceding paragraphs must be given to the permittee; and if compliance  
771 is not obtained [within] in the time specified, the [department]  
772 Department must proceed without delay, and without further notice or

773 proceedings, to use the cash deposited, or any [portion] part of the  
774 deposit, to cause the required work to be done by contract or otherwise  
775 in the Director's discretion [of the director].

776 (d) [In the event of] After any default in the performance of any term or  
777 condition of the permit, bond, letter of credit, certificate of guarantee, or  
778 other instrument, the [county] County, the surety, the issuing  
779 organization or entity, or any person employed or engaged on its behalf  
780 [has a right to go upon] may enter the site to complete the required work  
781 necessary to control erosion and sedimentation to protect properties,  
782 watercourses, and persons. [In the event] If the [department]  
783 Department undertakes this work with the funds from a forfeited cash or  
784 corporate bond, letter of credit, certificate of guarantee, or other  
785 instrument, the funds must be used to pay the cost of contracting,  
786 including engineering and administration, for necessary restoration of  
787 the site to control erosion and sedimentation [within the requirements  
788 of] as required by the plan, permit, bond, letter of credit, certificate of  
789 guarantee, other instrument, or this [chapter] Chapter. If the cost of the  
790 work necessary to control erosion and sedimentation or to protect  
791 properties, watercourses, and persons exceeds the amount of the cash or  
792 corporate bond, letter of credit, certificate of guarantee, or other  
793 instrument, the permittee must continue to be [firmly bound under a  
794 continuing obligation for payment of] obligated to pay all excess costs  
795 and expenses incurred by the [county] County. The cost and expenses  
796 are a lien [upon] on all property and all rights to property, real or  
797 personal, of any person liable to pay that cost. The cost [is] may be  
798 listed on the tax bill and [is] collected in the manner of ordinary taxes.

799 (e) A person must not interfere with or obstruct the [ingress or egress]  
 800 access to or from a site or premises by an authorized representative or  
 801 agent of any surety, issuing organization or entity, or the [department]  
 802 Department, engaged in completing the work required to be performed  
 803 under the permit or in complying with the [terms or conditions of the]  
 804 permit.

805 (f) A corporate bond, letter of credit, certificate of guarantee, or other  
 806 instrument remains in [full force and] effect until a completion  
 807 certificate is issued [pursuant to section] under Section 19-14 [of this  
 808 chapter]. A cash bond must be returned to the depositor or to the  
 809 depositor's successors or assigns [of the depositor upon issuance of]  
 810 when a completion certificate is issued for the work [in accordance with  
 811 section] under Section 19-14 [of this chapter], except any portion that  
 812 may have been used.

813 (g) The [director] Director immediately must [revoke] suspend the permit  
 814 or issue a stop work order [upon failure of] when any permittee [to]  
 815 does not maintain the bond or certificate of guarantee. If the [director]  
 816 Director finds a violation of an applicable law or regulation by an  
 817 organization or entity issuing certificates of guarantee, the [director]  
 818 Director may immediately revoke all permits of members of that  
 819 organization or entity for which a certificate of guarantee is posted, and  
 820 may post stop work orders wherever applicable until an appropriate  
 821 bond or other instrument acceptable to the [county] County is  
 822 substituted for the certificates of guarantee.

823 **19-11. Liability insurance.**

824 (a) If[, in the opinion of the director,] the Director finds that the nature of  
 825 the work [is such that is] may create a hazard to human life or endanger

826 adjoining property or property at a higher or lower elevation, or any  
 827 street or street improvement, or any other public property, [then] the  
 828 [director] Director may, before issuing the permit, require [that] the  
 829 applicant for a permit to file a certificate of insurance.

830 (b) [That] The certificate must show that the applicant is insured against  
 831 claims for damages [for damages] for personal injury and property  
 832 damage in an amount not less than [twenty-five thousand dollars  
 833 (\$25,000.00)] \$25,000. Those damages include damage to the County  
 834 by deposit or washing of material onto County streets or other public  
 835 improvements, which may arise from or out of the performance of the  
 836 work, whether the [performance be] work is performed by the applicant,  
 837 [the] a subcontractor [of the applicant], or any person directly or  
 838 indirectly employed by the applicant.

839 (c) The Director must set the amount of insurance [must be prescribed by  
 840 the director in accordance with] according to the nature of the risks  
 841 involved. Insurance must be written by a company licensed to do  
 842 business in the state and approved by the County. [Neither issuance]  
 843 Issuance of a permit, [nor] or compliance with [these provisions] this  
 844 Chapter or any condition imposed by the Department, [relieves] does  
 845 not relieve any person from any responsibility for damage to persons or  
 846 property otherwise imposed by law[, nor] or impose any liability [upon  
 847 the county] on the County for damages to persons or property.

848 **19-12. Inspections.**

849 (a) [Authorized representatives] Any authorized representative of the  
 850 [department] Department may enter [properties] any property permitted  
 851 under this [chapter] Chapter [for the purpose of inspection] to inspect

- 852 and [enforcement of the provisions of the] enforce this [chapter]  
853 Chapter.
- 854 (b) Land-disturbing activity [may] requiring a permit must not proceed until  
855 [approved by] the [department] Department approves. All work must  
856 be performed in accordance with [a sequence shown on the approved  
857 plan or a revised] the sequence approved by the [department]  
858 Department.
- 859 (c) The permittee [shall] must notify the [department] Department [forty-  
860 eight (48)] 48 hours before [commencing] beginning any land-  
861 disturbing activity and, unless [waived by] the [department] Department  
862 waives the meeting, [is required to] must hold a preconstruction meeting  
863 [between the permittee or the representative of the permittee and] with  
864 an authorized representative of the [department] Department.
- 865 (d) [A] The permittee must keep a copy of the approved erosion and  
866 sediment control plan and the [sediment control] permit [must be]  
867 available on the site for inspection by any authorized [representatives]  
868 representative of the [department] Department. Field markings showing  
869 limits of disturbance must be on site during [all] any [installation of  
870 sediment control measures, construction, or other] land-disturbing  
871 [activities] activity.
- 872 (e) Each site that has [a designed] an erosion and sediment control plan  
873 must be inspected [as necessary to ensure that sediment control  
874 measures are installed and effectively maintained in compliance with  
875 the approved plan and permit requirements] on average, every 2 weeks.  
876 [As a minimum] Unless waived, the permittee must obtain an inspection  
877 by the [department] Department at the following stages:

- 878 (1) [Following the installation of] after installing any sediment  
879 control [measures] measure or [practices] practice and [prior to]  
880 before any other land disturbance;
- 881 (2) [During] during the construction of any sediment [basins] basin  
882 or stormwater management [structures] structure, at [the] each  
883 required inspection [points] point;
- 884 (3) [During] during rough grading, including hauling of any  
885 imported or wasted [materials] material;
- 886 (4) [Prior to the removal or modification of] before removing or  
887 modifying any sediment control measure or practice; and
- 888 (5) [Upon completion of] after completing final grading, including  
889 established ground [covers] cover and planting, installation of  
890 [all] any vegetative [measures] measure, and all other work [in  
891 accordance with] required by the approved plan.
- 892 (f) If [there is a failure to] a person does not comply with [the requirements  
893 of] this [chapter] Chapter, the [department] Department must inspect the  
894 work and notify the permittee [or] and the [representative of the  
895 permittee] responsible personnel in writing. The notice issued must[, as  
896 a minimum,] at least state the nature of the violation, any practice or  
897 plan [deficiencies] deficiency, required corrective action, and  
898 compliance time. Any [portion] part of the work that does not comply  
899 promptly must be corrected by the permittee. The [department]  
900 Department may make additional inspections as it deems necessary, and  
901 [has the right to] may waive inspections, [excluding] other than the final  
902 inspection [as provided in section] under Section 19-14. The  
903 [department] Department must maintain a permanent record of each  
904 inspection. [Included] That record must [be] include the date, the

905 location or project identification, whether [or not] the approved plan has  
 906 been implemented and measures maintained, and, if a violation exists,  
 907 the [type of] enforcement action taken.

908 (g) When approved plans developed under [the provisions of] this [chapter]  
 909 Chapter show the use of temporary basins or permanent stormwater  
 910 management structures, the [department] Department may require the  
 911 submission of supportive documents such as test results, as-built plans,  
 912 or material certifications. If necessary, in addition to its own  
 913 inspections, the [department] Department may require [that] any  
 914 [portion] part of the construction of basins or structures to be inspected  
 915 and certified by a licensed professional engineer or land surveyor. At  
 916 the [director's] Director's option, the permittee may secure the services  
 917 of a licensed professional engineer or land surveyor to inspect the  
 918 construction of the facilities and provide the [department] Department  
 919 with a fully documented certification that all construction is done in  
 920 accordance with [the provisions of] the approved plan[,] and all  
 921 applicable rules, regulations and specifications. If a certification is  
 922 provided to the [department] Department, the Department may waive  
 923 any [inspections] inspection required under [section] Section 19-  
 924 12(e)(2) for that basin or structure [may be waived]. In these cases, the  
 925 [department] Department must be notified at the required inspection  
 926 points and may make spot inspections.

927 (h) This Section does not restrict the Department from proceeding directly  
 928 with any available alternative enforcement procedure under Section 19-  
 929 69.

930 **19-12A. Complaints.**

931           The Department must accept and investigate any complaint about erosion and  
 932 sediment control concerns from any source, and must:

- 933           (a) conduct an initial investigation within 3 working days after receiving  
 934 the complaint;
- 935           (b) notify the complainant of the initial investigation and findings within 7  
 936 days after receiving the complaint; and
- 937           (c) take appropriate action when any violation is discovered during the  
 938 complaint investigation.

939 **19-13. Maintenance of structures, measures and devices.**

- 940           (a) The permittee or the owner of any property on which work has been  
 941 done [pursuant to] under a permit granted under this [chapter] Chapter,  
 942 or any other person or agent in control of that property, must maintain in  
 943 good and effective condition and promptly repair or restore [all grade  
 944 surfaces, walls, drains, dams and structures, plantings, vegetation,  
 945 erosion and sediment control measures, and other protective devices]  
 946 any grade surface, wall, drain, dam or structure, planting, vegetation,  
 947 erosion and sediment control measure, or other protective device.  
 948 Repair or restoration, and maintenance, must be in accordance with the  
 949 approved [plans, standards and specifications] plan, Standards and  
 950 Specifications, and permit as required by this [chapter] Chapter until  
 951 permanent measures are accepted by the [department] Department.
- 952           (b) Any person who performs work under a Washington Suburban Sanitary  
 953 Commission utility sediment control permit is responsible for the repair  
 954 or maintenance of all erosion and sediment control measures affected by  
 955 the utility construction. Repair or maintenance must be completed [in  
 956 accordance with] as provided in subsection (a) [of this section].

957 **19-14. Completion.**

958 Immediately [upon completion of the] after completing a project, the permittee  
959 must notify the [department] Department and schedule a final inspection. If, upon  
960 final inspection of the project, the [department] Department finds that all work  
961 subject to inspection has been satisfactorily completed in accordance with [the  
962 requirements of] this [chapter] Chapter, the permit, approved plans and  
963 specifications, [rules] and applicable regulations, and [that] the Department accepts  
964 any supporting documents required under [section] Section 19-12(g) [are accepted],  
965 the Department must issue a completion certificate covering the work [must be  
966 issued] to the permittee [by the department, with a copy submitted to the district].

967 **19-15. Protection of adjacent property [during clearing, grading and**  
968 **excavating activities].**

969 [A person must not initiate clearing, grading, or excavating activities  
970 sufficiently close to the property line so as to endanger any adjoining property,  
971 including a public street, sidewalk, or alley. The adjoining property should be  
972 supported and protected from damage that may result from clearing, grading, or  
973 excavating activities including settling, cracking or vegetative damage. If, in the  
974 opinion of the director, the clearing, grading, or excavation creates a hazard to life or  
975 property unless adequately safeguarded, the applicant must construct walls, fences,  
976 guard rails, or other structures to safeguard the adjoining private property or public  
977 street, sidewalk, alley, or other public property and persons, as the director may  
978 require.] Any land-disturbing activity must not be conducted without adequate  
979 protection and support for any adjoining property. The Director may require  
980 installation of a wall, fence, rail, sediment control measure, or other item to protect  
981 people and property.

982 **19-16. Deposits of soil or other material prohibited.**

983 (a) A person must not engage in any land-disturbing activity or by any  
984 action cause or permit any soil, earth, sand, gravel, rock, stone, or other

985 material, to be deposited [upon] on or to roll, flow, or wash [upon] on or  
 986 over the [premises] land of another [in a manner to] and cause damage  
 987 [to the premises] without the express written consent of the owner of the  
 988 affected premises [affected]. A [person] permittee must not engage in  
 989 any land-disturbing activity or by any action cause or permit any soil,  
 990 earth, sand, gravel, rock, stone, or other material to be deposited on or to  
 991 roll, flow, or wash [upon] on or over any public street, street  
 992 improvement, road, sewer, storm drain, watercourse, right-of-way, or  
 993 any public property in a manner to damage or to interfere with the use  
 994 of that property.

995 (b) A person must not, when hauling soil, earth, sand, gravel, rock, stone, or  
 996 other material over any public street, road, alley, or public property,  
 997 allow those materials to blow or spill over [and upon] or on any street,  
 998 road, alley, or public property or adjacent private property.

999 (c) If any soil, earth, sand, gravel, rock, stone, or other material is caused to  
 1000 be deposited [upon] on or to roll, flow, or wash [upon] on any public or  
 1001 private property in violation of [subsections] subsection (a) [and] or (b)  
 1002 [above], the permittee or person responsible must be notified by the  
 1003 Department and must cause the material to be removed from that  
 1004 property within [twenty-four (24)] 24 hours. In [the event of] an  
 1005 immediate danger to the public health or safety, the Department must  
 1006 give notice [must be given] by the most expeditious means, and the  
 1007 material must be removed immediately. [In the event it] If the material  
 1008 is not [so] removed, the [department] Department may [cause the]  
 1009 arrange for its removal; and the cost of that removal [by the department]  
 1010 must be paid to the [county] County by the person who failed to remove  
 1011 the material [and is a debt due the county]. The cost of removal is a lien

[upon] on all property and all rights to property, real or personal, of any person liable to pay that cost. The cost of removal must be listed on the tax bill and must be collected in the manner of ordinary taxes. [; provided, however, that] However, this [section must] Section does not [be interpreted as prohibiting] prohibit the [department] Department from proceeding directly with any alternative enforcement [procedures set forth in section 19-19 of this chapter] procedure under Section 19-69.

**19-17 Regulations.**

(a) The [director] Director may recommend [written] regulations [for administration of the provisions of] to administer this [article] Article, may hold public hearings [as part of this process] on any proposed regulation, and must obtain recommendations from the Montgomery Soil Conservation District before forwarding the recommendations to the County Executive. These regulations must include:

- (1) minimum erosion and sediment control plan requirements;
- (2) maximum duration of exposure;
- (3) critical slope protection;
- (4) on-site grading controls;
- (5) on-site drainage controls; and
- (6) protection of specimen trees.

(b) The [director] Director may recommend one or more [methodologies for calculating] methods to calculate the amount of surface area affected by tree cutting, including using tree cover measurements.

(c) [Regulations] The County Executive must adopt any regulation under subsection (a) [of this section are adopted by the county executive] under method (2) [of section 2A-15 of this Code].

1039 [(d) The director may recommend written regulations to establish, increase,  
1040 or decrease fees under section 19-6 of this chapter. Regulations to set  
1041 fees are adopted by the county executive under method (3) of section  
1042 2A-15 of this Code.]

1043 [(e)] (d) Regulations adopted under this Section must not conflict with [nor] or  
1044 waive any [provisions] provision of this Chapter, and must not be less  
1045 restrictive than applicable requirements of state law or regulation.

1046 **ARTICLE V. WATER QUALITY REVIEW IN SPECIAL PROTECTION**  
1047 **AREAS.**

1048 **19-60. Findings and purpose.**

1049 \* \* \*

1050 (b) The purposes of this Article are to:

1051 \* \* \*

1052 (2) establish coordinated procedures, performance goals, [criteria,]  
1053 and requirements for development in special protection areas that  
1054 will mitigate adverse impacts on water resource areas during and  
1055 after construction or other land disturbing activities;

1056 \* \* \*

1057 **19-61. Definitions.**

1058 In this Article, the following words and phrases have the following meanings:

1059 \* \* \*

1060 [(a)] \* \* \*

1061 [(b)] **Best Management Practices Monitoring Plan** means a [statement  
1062 prepared by an applicant describing how] written plan that documents  
1063 the [applicant will monitor and] scientific work necessary to assess the  
1064 effectiveness of [its] best management practices in maintaining water  
1065 quality.

1066 **DEP Director** means the Director of the Department of Environmental  
1067 Protection or the Director's designee.

- 1068 [(c)] \* \* \*
- 1069 [(d)] \* \* \*
- 1070 [(e)] \* \* \*
- 1071 [(f)] \* \* \*
- 1072 [(g)] \* \* \*
- 1073 [(h)] \* \* \*
- 1074 [(i)] \* \* \*
- 1075 [(j)] \* \* \*
- 1076 [(k)] \* \* \*
- 1077 [(l)] \* \* \*
- 1078 [(m)] \* \* \*
- 1079 [(n)] \* \* \*

1080 **19-62. Applicability.**

1081 \* \* \*

1082 (b) *Privately owned property.* Except as otherwise expressly provided in  
1083 this Chapter, the requirements for a water quality inventory and a  
1084 preliminary and final water quality plan under Section 19-64 apply in  
1085 any area designated as a special protection area to a person proposing a  
1086 land disturbing activity on privately owned property:

1087 \* \* \*

1088 **19-64. Water Quality Inventory Submittal; Water Quality Plans.**

1089 \* \* \*

1090 (b) *Preliminary water quality plan submission.* Except where exempt  
1091 under this Article, a person must submit the following, in addition to  
1092 any information required for a water quality inventory, as part of a

1093 complete application for development approval as provided in Section  
1094 19-65[(b)]:

1095 \* \* \*

1096 (3) Description of any other mitigation techniques proposed by the  
1097 applicant or required by applicable guidelines, law, or  
1098 regulations; and

1099 (4) Documentation of anticipated performance on water quality of  
1100 each proposed measure, individually and together[;]. [and]

1101 [(5) Proposed best management practices monitoring plan, including:

1102 (A) Location, nature, form, and frequency of the monitoring to  
1103 be conducted; and

1104 (B) Dates of report submissions and monitoring milestones.]

1105 (c) *Final water quality plan submission.* A final water quality plan must be  
1106 submitted as provided in Section 19-65 and must include the following:

1107 \* \* \*

1108 (3) Proposed compliance program, revised as required by the  
1109 Director, that describes the installation[,] and inspection[, and  
1110 monitoring schedule] of [best] all stormwater management  
1111 [practices monitoring plan, including detailed instructions  
1112 concerning how the] facilities [operate and should be  
1113 maintained];

1114 (4) Draft maintenance agreements and easements covering routine  
1115 maintenance, long-term repair or replacement of any stormwater  
1116 management facility or other facilities required by the water  
1117 quality plan, and an assurance of access to the facilities for  
1118 inspection and monitoring;

1119 (5) Copy of valid water quality certification approved by state and  
 1120 federal agencies or, if not available, a report on the status of the  
 1121 certification review and a copy of any [revisions] revision made  
 1122 to the certification application;

1123 \* \* \*

1124 **19-65. Application, review, and approval procedures.**

1125 (a) *General.*

1126 \* \* \*

1127 (2) *Division of approval responsibilities.*

1128 \* \* \*

1129 (B) In acting on a preliminary or final water quality plan, the  
 1130 Planning Board's approval must conform to the approval of  
 1131 the DPS Director on any element for which the DPS  
 1132 Director has lead agency responsibility. Those elements  
 1133 include:

1134 (i) Performance goals [or criteria] for the approved best  
 1135 management practices;

1136 [(ii) Best management practices monitoring plan;]

1137 [(iii)] (ii) Stormwater management concept plan;

1138 [(iv)] (iii) Erosion and sediment control concept plan;

1139 and

1140 [(v)] (iv) Any other element of the plan for which the  
 1141 Department has primary lead agency design, review,  
 1142 and approval responsibility.

1143 (C) The Department of Environmental Protection has the lead  
 1144 agency responsibility for the [stream] monitoring program,

1145 including the [stream] monitoring [plan] of streams and  
 1146 best management practices.

1147 \* \* \*

1148 (c) *Review.* After receiving a preliminary or final water quality plan, the  
 1149 Planning Director must refer the plan to the DPS Director and other  
 1150 reviewing agencies. The DPS Director must transmit to the Planning  
 1151 Director within the time limits for acting on a plan established by law:

1152 (1) Findings on compliance with this Chapter of any:

1153 (A) stormwater management concept plan;

1154 (B) erosion and sediment control concept plan;

1155 [(C) best management practices monitoring plan;]

1156 [(D)] (C) stream monitoring plan and best management practices  
 1157 monitoring plan as prepared and implemented by the  
 1158 Department of Environmental Protection;

1159 [(E)] (D) maintenance agreements and easements; and

1160 [(F)] (E) other element of a plan in which the Department has  
 1161 primary lead agency review and approval responsibility.

1162 \* \* \*

1163 (d) *Condition of approval.*

1164 \* \* \*

1165 (3) The final water quality plan, as amended by the Planning Board,  
 1166 must be a condition of approval of the development application  
 1167 and must conform to:

1168 \* \* \*

1169 (D) any bond provisions required under [Section] Sections 19-  
 1170 10 and 19-32, and [to ensure implementation of best

1171 management practices monitoring and] any element in the  
 1172 water quality plan required by the Planning Board; and  
 1173 [(E) provisions to implement the best management practices  
 1174 monitoring plan; and]  
 1175 [(F)] (E) any other condition necessary to implement this Article.

1176 \* \* \*

1177 **19-66. Enforcement, appeals, waiver.**

- 1178 (a) *Enforcement agreement.* Each final water quality plan must contain an  
 1179 enforceable agreement, including an approved financial security  
 1180 instrument, with the Planning Board and the DPS Director, requiring  
 1181 maintenance of all facilities required by the plan [and best management  
 1182 practices monitoring]. The financial security instrument may be  
 1183 combined with any other financial security instrument required by this  
 1184 Chapter.
- 1185 (b) *Transference of responsibility.* Each approved final water quality plan  
 1186 for a residential project must provide that neither ownership [and] nor  
 1187 maintenance of any feature of the water quality plan [must not] may be  
 1188 transferred to the County, a homeowners association, or any resident  
 1189 until the DPS Director or the Planning Board, depending on which is the  
 1190 lead agency to review the feature, finds that:
- 1191 (1) each feature has been installed in accordance with the  
 1192 specifications shown on the approved plan;
  - 1193 (2) each feature has been verified, by inspection[, monitoring, or  
 1194 otherwise,] to have been operational and functioning as designed  
 1195 for a reasonable period of time after construction of all units and  
 1196 facilities associated with the last phase of the development  
 1197 project]. The length of time must not exceed 5 years and must

1198 relate to site-specific characteristics and the type and nature of the  
1199 particular feature]; and

1200 \* \* \*

1201 (d) *Event of default.*

1202 (1) Events of default are:

1203 (A) Required stormwater management facilities, erosion and  
1204 sediment control facilities, or other mitigation techniques  
1205 have not been installed or maintained in a correct manner.

1206 [(B) Monitoring under a best management practices monitoring  
1207 plan has not been performed or reported as required.]

1208 [(C)] (B) An applicant has not complied with any other  
1209 requirement of a water quality plan or this Article.

1210 [(D)] (C) Required fees have not been paid to support a stream  
1211 monitoring program.

1212 \* \* \*

1213 (e) *Waiver*

1214 \* \* \*

1215 (2) *Review and action.*

1216 \* \* \*

1217 (B) the applicant would still comply with all applicable  
1218 federal, state, or [county] County water quality standards;  
1219 and

1220 \* \* \*

1221 **19-67. Implementation.**

1222 \* \* \*

1223 (b) *Regulations; technical manual; environmental guidelines; performance*  
1224 *goals [and criteria].*

\* \* \*

- 1225
- 1226 [(6) qualifications for persons submitting data under this Article;
- 1227 (7) procedures and standards for developing and implementing a best
- 1228 management practices monitoring program;
- 1229 (8) parameters of any generic and site-specific performance goals
- 1230 under a best management practices monitoring program;]
- 1231 [(9)] (6) model language for an enforcement agreement or a
- 1232 homeowners association maintenance agreement;
- 1233 [(10)] performance criteria based on monitoring results that will be used
- 1234 to evaluate water quality plans to ensure compliance with all
- 1235 relevant federal, state, and county laws. Until monitoring results
- 1236 are available, the Department must develop interim performance
- 1237 goals; and]
- 1238 [(11)] (7) other appropriate program requirements consistent with this
- 1239 Article.
- 1240 [(d)] (c) *Annual Report*. The Directors of Environmental Protection and
- 1241 Permitting Services jointly must prepare an annual report, in
- 1242 coordination with the Planning Board, to the County Council that
- 1243 describes the effectiveness of best management practices and the
- 1244 observed impact of development on the biological integrity of streams
- 1245 in special protection areas. [The report must also discuss progress made
- 1246 toward the development of best management practices performance-
- 1247 based and in-stream biological enforcement mechanisms.] A copy of
- 1248 the report must be sent to the Planning Board and other responsible
- 1249 agencies.
- 1250 [(e)](d) *Fee*.

- 1251 (1) The Directors of Environmental Protection and Permitting  
1252 Services may set a fee in an amount not to exceed the reasonable  
1253 cost of administering, implementing, and enforcing their  
1254 respective duties under this Article. The fee, including the time  
1255 when it must be paid, must be set by regulation under Method  
1256 (3). The Planning Board may set a fee under Chapter 50. A  
1257 person to whom this Article applies must pay the fees.
- 1258 (2) The fees established under this subsection may be based on the  
1259 size of a tract or other relevant factor and are intended to offset  
1260 the cost of:
- 1261 (A) permit review and enforcement of conditions; and
- 1262 (B) [stream] monitoring of streams and best management  
1263 practices to determine the impact of a particular  
1264 development on stream water quality as well as the  
1265 effectiveness of certain best management practices in  
1266 maintaining stream water quality.

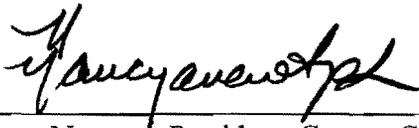
1267 **Sec. 2. Expedited Effective Date.**

1268 The Council declares that this legislation is necessary for the immediate protection of  
1269 the public interest. This Act takes effect on the date when it becomes law.

1270 *Approved:*

1271

1272



3/21/13

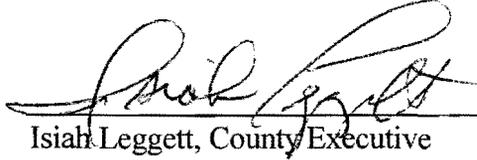
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Nancy Navarro, President, County Council

Date

1273 *Approved:*

1274



3/29/13

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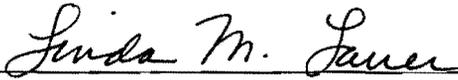
Isiah Leggett, County Executive

Date

1275 *This is a correct copy of Council action.*

1276

1277



4/1/13

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Linda M. Lauer, Clerk of the Council

Date